

1 Kelly McCarthy Sutherland, Esq., #168222
2 LOMBARDO & GILLES, LLP
3 318 Cayuga Street
4 Salinas, California 93901
5 Telephone: 831.754.2444
6 Facsimile: 831.754.2011

7
8 Attorneys for Plaintiffs
9 ASA Farms, Inc. and Braga Ranch

ADR

FILED

2008 JAN -8 A 11:20

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL. S.J.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

ASA FARMS, INC., a California corporation and
BRAGA RANCH,

Plaintiffs,
v.

FRESH 'N HEALTHY, INC., a Delaware
corporation, MARK WILLIAMS, an individual;
JACK PARSON, an individual; STEVEN
CINELLI, an individual; CHAD HAGEN, an
individual, SANTOS MARTINEZ, an individual;
DON BEAM, an individual; DARRYL
NICHOLSON, an individual; RICHARD MAY,
an individual; THOMAS COLOGNA, an
individual; PRESTWICK PARTNERS, LLC, a
California limited liability company; SOLSTICE
VENTURE PARTNERS, LLC, a business entity
form unknown; VFINANCE INVESTMENTS, a
business entity form unknown; FMP
VINEYARD, LLC, a New Mexico limited
liability company; BUTTONWOOD OPTION,
LLC, a business entity form unknown; DW, LLC,
a business entity form unknown; M SOLAZZO
TRUST 2002; P. SOLAZZO 1998; GIBBONS
FAMILY TRUST; BIXLER TRUST;
STEIGERWALD TRUST and CARTER TRUST,
and DOES 1 through 50, inclusive,

Defendants.

C 08 00122
ATTORNEY CERTIFICATION
WHY NOTICE SHOULD NOT BE
GIVEN
RULE 65(b)

PVT

The undersigned represents Plaintiffs in this action to enforce the trust provisions of the Perishable Agricultural Commodities Act (PACA), 7 USC §499e(c).

3 Notice of this motion should not be required because notice will afford Defendant Fresh
4 ‘N Healthy, Inc. (“Fresh”) an opportunity to dissipate trust assets that are required by statute to
5 be held for the benefit of the Plaintiffs, who are PACA trust creditors of Defendants.

Defendants are under a statutory duty to pay promptly for produce from the PACA trust. Defendants have failed to pay. In addition:

8 1. Upon information and belief, Fresh has had its line of credit pulled by Comerica
9 Bank; and

10 2. Fresh is no longer operating.

11 All of the above evidence demonstrates that Defendant Fresh is experiencing serious
12 financial problems and that Defendants may have insufficient funds to pay Plaintiffs' claims in
13 full. Therefore, advising Defendant Fresh of the pendency of this motion will allow
14 Defendants to make payments of trust assets in their possession to non-trust debts. Once the
15 trust assets are dissipated, it is all but impossible to recover them. H.R. Rep. No. 543, 98th
16 Cong. 2d Sess. 3-4 (1983), reprinted in 1984 US Code & Admin. News 405, 411. See also *J.R.*
17 *Brooks & Son, Inc. v. Norman's Country Market, Inc.*, 98 B.R. 47 (Bkrtcy. N.D. Fla. 1989).
18 Entry of an ex-parte temporary restraining order guarantees the performance of this statutory
19 duty and prevents **any** further dissipation pending further hearing, which can be set as soon as
possible.

Dated: January 7, 2008

LOMBARDO & GILLES, LLP

By: Kelly Sutherland
Kelly McCarthy Sutherland
Attorneys for Plaintiffs
ASA Farms, Inc., and Braga Ranch